



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-32
July 7, 1999

PROTESTS TO THE AGENCY

PURPOSE: To address whether or not there is any appeal from or reconsideration of Agency protest decisions within NASA, and to address whether or not NASA will continue to consider an Agency protest that is related to pending judicial proceedings or where the protester has filed a protest on the same procurement with the United States General Accounting Office prior to receipt of an Agency protest decision

BACKGROUND: NASA has a mandatory solicitation provision required to be inserted in all solicitations which informs potential bidders or offerors to whom Agency protests may be submitted. The provision provides that potential bidders or offerors may submit a protest directly to the Contracting Officer or alternatively to the Deputy Associate Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review of the protest. The effect of this information is to give potential bidders or offerors a better understanding of NASA's process for considering protests to the Agency.

REGULATION: Changes are made in Part 1833 as set forth in the enclosed replacement pages.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1833 of the NFS.

REGULATORY COMPLIANCE: This PN was published as a final rule in the Federal Register (64 FR 36606-36607, July 7, 1999).

EFFECTIVE DATE: This PN is effective as dated and shall remain in effect until canceled or superseded.

HEADQUARTERS CONTACT: Dave Beck, Code HK, (202) 358-0482; email: dbeck@hq.nasa.gov.

R. Scott Thompson
Director, Contract Management Division

Enclosures

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PART 1833
PROTESTS, DISPUTES, AND APPEALS

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PART 1833
PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1--Protests

1833.103 Protests to the agency.

(c) An independent review under the provision at 1852.233-70 is available as an alternative to a protest to the contracting officer, but not as an appeal of a protest decision. All independent reviews shall be conducted by the Deputy Associate Administrator for Procurement or designee. Such reviews are different from the Ombudsman Program described at 1815.7001.

(d) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the United States General Accounting Office prior to receipt of an Agency protest decision.

(4) When a potential bidder or offeror submits an Agency protest to NASA to the contracting officer or alternatively requests an independent review, the decision of the contracting officer or the independent review official shall be final and is not subject to any appeal or reconsideration within NASA.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233-70.

1833.104 Protests to GAO.

The Associate Administrator for Procurement is the sole authority for deciding whether to defend a protest to GAO or to direct remedial action. NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this part and other guidance provided by NASA Headquarters.

(a)(2) The Headquarters Office of Procurement (Code HS) shall notify the contracting officer of protest receipt, and the contracting officer shall immediately give notice of the protest to all interested parties. Oral contracting officer notices shall be subsequently confirmed in writing, and the contracting officer shall also send a copy of the written confirmation to Code HS, the Headquarters Office of the General Counsel (Code GK), and the installation Chief Counsel.

(3)(i) The contracting officer shall send four copies of the protest report, consisting of the protest file, the contracting officer's statement of facts, and a draft memorandum of law to Code GK within 20 days after GAO notification of protest receipt. Also include a copy of the file index in electronic format. The contracting officer shall retain a minimum of two copies of the protest file.

(ii) When an actual or prospective offeror requests access to a protest file, the contracting officer shall take the following actions, except (a) and (b) are not required if already accomplished:

(a) Send a copy of the protest file index to Code GK within 10 days of receipt of the request.

(b) Send a copy of the protest file to Code GK within 15 days of receipt of the request.

(c) With Code GK concurrence, send the protest file and index to the requesting party to ensure delivery within 20 days after receipt of the request.

(iv) Code GK shall submit the protest file to GAO.

(4)(i) Code GK shall provide copies of the report to the protestor(s), any intervenors, and the installation Chief Counsel.

(b)(1) The Associate Administrator for Procurement (Code HS) is the approval authority for contract award.

(c)(1) The contracting officer shall consult Code HS before terminating a protested contract.

(2) The Associate Administrator for Procurement (Code HS) is the approval authority for authorizing contract performance.

(f) The Agency may request GAO reconsideration of its decision within 10 days of issuance. If reconsideration is appropriate, the installation Chief Counsel shall forward a draft request for reconsideration, with any additional supporting documentation, to Code GK within 6 days of issuance of the GAO decision.

1833.106 Solicitation provision and contract clause.

(a) The contracting officer shall be the designated recipient of Agency protests in paragraph (a) of the provision at FAR 52.233-2.

1833.106-70 Solicitation provision.

Contracting officers shall insert the provision at 1852.233-70 in all solicitations.

Subpart 1833.2--Disputes and Appeals

1833.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Headquarters Offices of Inspector General (Code W) and the General Counsel (Code G).

1833.210 Contracting officer's authority.

See NASA Policy Directive 2010.2 on use of Alternative Dispute Resolution.

1833.211 Contracting officer's decision.

(a)(4)(v) The Armed Services Board of Contract Appeals is the NASA Administrator's authorized representative for hearing appeals of contracting officer final decisions. Accordingly, contracting officers shall cite that fact in the final decision letter, provide the Board's mailing

address (Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041-3208), and include a notification that the Board's operating procedures appear in Part 48, Code of Federal Regulations, Chapter 2, Appendix A.

1833.215 Contract clause.

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I whenever continued performance is vital to national security, the public health and welfare, important agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.